A

LIM HUA v. CHEMFERT SDN BHD & ORS

HIGH COURT MALAYA, SHAH ALAM
AZIMAH OMAR JC
[PETITION NO: 26-9-2005]
19 FEBRUARY 2016

B

CIVIL PROCEDURE: *Bill of costs – Assessment – Appeal against – Allegation of discrepancies – Whether proved – Whether bill of costs proper – Whether bill of costs explicitly spelt out pages of documents – Whether there was failure to indicate person in charge and specific time cost of particularised works done – Whether there were duplicity in claims – Whether petitioner had substantial challenges against bill of costs – Whether assessment done on proper principles of law and due consideration*

C

This was an appeal against the assessment of bill of costs by the Senior Assistant Registrar ('SAR') by the petitioner in which the petitioner should pay the receivers and managers ('R&M') of the first respondent. The petitioner's main submission was merely on the manner in which the bill of costs were prepared and the alleged discrepancies that arose. The petitioner contended, *inter alia*, that (i) the bill of costs was improper in that it allegedly was confusing and difficult to cross refer with the numerous documents filed; (ii) the bills of costs did not explicitly and extensively spell out the exact pages of the documents which were referred to in the bundles; (iii) the bill of costs did not indicate the person in charge and specific time cost of all the particularised works done, thus the bill of costs was doubtful as any measure of tracing or verification could not be taken to scrutinise the particulars of works in the bill of costs; (iv) there were duplicity in claims in that multiple person(s) in charge were claiming for the same tasks merely because the particulars of the bill or the documentary reports used the words 'we', 'us' and 'team'; and (v) the SAR had not made the appropriate deductions.

D

E

F

Held (dismissing petitioner's appeal):

G

(1) The bill of costs was proper and it was more so the case that the petitioner who was reluctant to properly read through the documents filed which were already referred to in the bill of costs. The SAR for the whole length of the trial had addressed each and every single item in the bill of costs and had cross referred to all the bundles ceaselessly. The issue of an improper bill of costs never arose. It would be incredulous that this court should rule out that every bill of costs was improper merely because a single party found difficulties in cross-referring the bill of costs and the corresponding documents in the bundles, especially when during the whole trial, the SAR and the R&M had no trouble at all to make cross reference. (para 8)

H

I

(2) The bill of costs had already indicated the person(s) in charge for the numerous works and the cumulative time costs taken for the numerous tasks listed. These cumulative time-costs and persons in charge then

were put to further scrutiny and cross-reference to numerous documents and reports filed into court. The verification and assessment was properly done not on the isolated reading of the bill but on the cross-reference of the bill with all other supporting documents referred to and filed into court. There was no doubt regarding performance, thus the issue of the identities of the person in charge of each task was irrelevant. The SAR had correctly evaluated the bill of costs, and this court was satisfied that the SAR had correctly decided that the evidences proved the tasks undertaken and time costs particularised in the bill of costs. (paras 13, 15 & 20)

(3) It is verily common that a group, or a group effort, an organisation, a community, a committee and a team would regard itself in the plural form, even for single individuals. This was a very simple concept to understand. More so since the parties in the present case were represented by lawyers of Malaya. Hypothetically speaking, this court would say that it was very common in the legal fraternity especially so in a legal firm that an associate, or a partner of a law firm, would regard himself or herself, as 'we' or 'our' or 'us' irrespective of who was personally assigned to conduct the case or carry out the task. It was utterly telling that the petitioner had no substantial challenges against the bill of costs and had no interest to pay anything for the R&M's services. (paras 24 & 25)

(4) In the essence of assessment of damages, what is pertinent is proof. Notwithstanding the fact that there might be discrepancy between an initial claim and a final claim, the most important issue is proof. Even if there is a discrepancy, but if all of the evidence is sufficient to hold the claim, then there is no reason at all for this court to not order payment on the proven claim. (para 29)

(5) The petitioner had raised certain issues very late at this appeal stage, thus it was apparent to the court that they were merely after-thoughts and an excuse to either delay or avoid liability to pay the bill of costs. The SAR had considered all the relevant documents and proofs in assessing the justifiability of the bill of costs while the petitioner had only come to court contending mere speculation, bare assertions and contentions. The R&M had come forth to the best of their capability with substance, while the petitioner had only come forth with mere conjectures and speculations. Thus, it was this court's decision not to interfere with the decision of the SAR. The SAR had assessed the bill of costs on proper principles of law and due consideration and references to numerous documentary proofs which were filed into court. The petitioner had ultimately failed to prove its case. (paras 31, 50, 51 & 53)

Case(s) referred to:

Globaltech Enterprise Sdn Bhd v. Commerce Assurance Bhd [2014] 1 CLJ 517 HC ***(foll)***

Representative of the Estate of Kuan Mei Ling, Deceased (Provisional Liquidator of the Respondent Company) v. Metroplex Bhd [2013] 3 CLJ 196 CA ***(refd)***

For the petitioner - Abdul Rashid Akhir; M/s Hazura Yusoff & Partners

For the 1st respondents - Thomas Wong (Maidzatul Akmal with him); M/s Thomas Wong & Co

Reported by Suhainah Wahiduddin

JUDGMENT

Azimah Omar JC:

Background Facts

[1] The present appeal is simply an appeal against the assessment of bill of costs by the learned Senior Assistant Registrar ("SAR") by the appellant-petitioner ("petitioner") in which the petitioner ("Lim Hua") should pay the receivers and managers of the first respondent ("Onn Kien Hoe and Mok Yuen Lok").

[2] It is important to note that the petitioner initially has not challenged at all to the bill of costs. Following the absence of challenge to the Notis Penetapan oleh Pendaftar and bill of costs which were filed on 21 February 2013, the learned Senior Assistant Registrar Puan Sara Zuriati has allowed and ordered payment of the totality of bill of costs considering that the substituted service of the bill of costs has been perfected. Again, at this juncture, the petitioner has not challenged the bill of costs at all.

[3] Even upon the previous receivers and managers of the first respondent's initiation of a bankruptcy action against the appellant-petitioner (filed on 22 November 2013), the petitioner has for time and time again, failed to challenge the bill of costs and only at the final hour, a day before the hearing of the creditor's petition, the petitioner served a notice of application to set aside the bankruptcy action as well as the bill of costs.

[4] Preliminarily, it is already telling that the petitioner has no interest at all to adhere to pay the bill of costs and was merely putting a front to eschew from and delay his inevitable liability to pay the bill of costs. The bill of costs and the Notis Penetapan by the learned Registrar has been filed as early as the first quarter of the year 2013 and any challenge raised by the petitioner was only made almost ten months after the filing. And to make matters worse, the challenge was only raised after the previous receivers and managers of the first respondent initiated and almost completed a bankruptcy action against the petitioner.

[5] During the hearing of the petitioner's application to set aside the bill of costs, the petitioner has agreed to withdraw its application with condition that the bill of costs is assessed again before the learned SAR with the presence of the petitioner and/or his representative. The learned SAR has assessed the bill of costs and allowed a majority of the bill of costs *albeit* with slight deductions. The petitioner appeals against this decision by the Senior Assistant Registrar, which shall be determined in the present case.

[6] Now, having the benefit of the parties' written submissions and the learned SAR's grounds of judgment, it is already clear to this court that the learned SAR has assessed each part of the bill of costs properly and consistently with reference to the numerous reports and documents in bundles 1 to 25, as well as the internal documents ("DIC") before allowing the claim under the bill of costs.

[7] It must be highlighted at this juncture that the petitioner has only loosely referred to any specific document in bundles 1 to 25 in attempting to challenge the particulars of the bill of costs. By and large the petitioner's appeal was hinged on speculations and loosely contended arguments which are either unsubstantiated or downright desperate. The petitioner has totally eschewed from the task to address the documents filed into court and merely focused his challenges on allegations of discrepancies between reports and the bill of costs. At the core of assessment, it matters not if there were discrepancies between the bill of costs and any antecedent document. What matters is the particulars of the bill of costs, and the substantiation *vide* cross-reference with evidential documents which were filed into the court. And the petitioner utterly failed to address these documents. The whole length of the petitioner's main submission and submission in reply is merely on the manner in which the bill of costs were prepared and discrepancies in which the learned SAR has already considered, with cross-reference with numerous documents (which were not addressed in any measure of specificity by the petitioner) and has made the appropriate deductions to particulars in which did not have any corresponding proof.

The Bill Of Costs Was A Proper Bill

[8] The petitioner contended that the bill of costs was improper in that the bill of costs allegedly is confusing and difficult to cross-refer with the numerous documents filed. However, this court finds that the bill of costs is proper and it is more so the case that the petitioner who is reluctant to properly read through the documents which were filed in bundles 1 to 25 which were already referred to in the bill of costs. The petitioner contends that the bill of costs is improper merely because the bill of costs does not explicitly and extensively spell out the exact pages of the documents which were referred to in the bundles. The learned SAR for the whole length of the trial has addressed each and every single item in the bill of costs and has cross-referred to all the bundles 1 to 25 ceaselessly. The issue of an improper

bill of costs never arose. It is clear that the bill of costs was proper and that cross-references between the bill and the bundles were possible. It would be incredulous that this court should rule out that every bill of costs is improper merely because a single party finds difficulties in cross-referring the bill of costs and the corresponding documents in the bundles, especially when during the whole trial, the SAR and the R&M has no trouble at all to make cross-reference. For example in Part C item 1 of the bill of costs, it is stated:

Ref:

(1) Statutory Documents File;

(2) Audit working papers & audited accounts;

(3) Investigation File 1 of 2

(4) Investigation File 2 of 2

(5) Eon Bank Matters;

(6) BCBB Bank Matters

(7) MBB Bank Matters

(8) Misc Bank Matters

(9) Correspondence with Authorities and others file 2 of 2; and

(10) Legal Matters S218

[9] The relevant documents have already been laid down in the bill of costs. There should have been no problem of cross-reference. More so when the learned SAR has no issues in making those cross-references with the R&M.

The Stipulation Of Person(s) In Charge And The Cumulative Time-Costs Is Properly Assessed And Proven

[10] By and large, the majority of the petitioner's contention is on the fact that that the bill of costs does not indicate the person-in-charge and specific time-cost of all the particularised works done. Merely on this fact, the petitioner contends that the bill of costs is doubtful as any measure of tracing or verification cannot be taken to scrutinise the particulars of works in the bill of costs. This contention was tirelessly repeated against all parts of the bill of costs from Part A to Part F.

[11] However, it must be noted that the bill of costs indeed include and indicate the person(s) in charge for the works done although the person(s) in charge is not indicated for each and every separate particular items of the bill of costs. What was indicated is the person(s) in charge for numerous listed works and the cumulative time-costs incurred for each person(s) in charge.

[12] Merely on the above manner in which the bill of costs is prepared, the petitioner argued that the bill is improper in that there is a want of verification as to the exact person who performed the listed works and the

exact amount of time taken for each and every single work. It was argued that with this form of bill of costs, the R&M can simply pluck the time-costs for every task out of thin air.

[13] However, this contention does not hold water at all. Be that as it may that each particulars of work does not indicate the specific time-cost and person in charge, the bill of costs has already indicated the person(s) in charge in for the numerous works and the cumulative time costs taken for the numerous tasks listed. These cumulative time-costs and persons in charge then were put to further scrutiny and cross-reference to numerous documents and reports filed into the court. The verification and assessment was properly done not on the isolated reading of the Bill but on the cross-reference of the bill with all other supporting documents referred to and filed into court.

[14] It was already mentioned who are the persons tasked to perform all of the itemised tasks. It would make no difference at all to indicate the person-in-charge for every task itemised.

[15] Suffice that the petitioner has never denied the performance of all the itemised conduct in the bill by the person(s) in charge indicated in the bill. There is no doubt regarding performance. And since there are not any doubts as to performance, the issue of the identities of the person in charge of each task are irrelevant. Rather than hinging on a speculation of fabricated particulars, it is more relevant for the petitioner to address in specificity the documents which he intends to discredit regarding the proof or absence of proof of the works done by the person(s) in charge and time-costs indicated in the bill. This is exactly what the petitioner has utterly failed to undertake. Instead the petitioner fully hinges his challenges on bare assertions and speculations, and totally failed to address the numerous documentary proofs which were filed and referred to by the R&M.

[16] There is no necessity for this court to follow the petitioner's supposition for the bill of costs to be the format as the petitioner submitted. However, in submitting on the format's issue, the counsel for petitioner has failed or rather did not submit to this court any law to corroborate his contention.

[17] Furthermore, regarding the time costs, it is more relevant for the petitioner to contend and prove that the cumulative hours put in for the tasks cannot be proven through discrediting the documentary evidence referred to by the R&M. In the present case, the petitioner merely alleged that the hours were "plucked" out of thin air. However, the R&M has already referred to and the learned SAR has already cross-referred the relevant documents in the bundles, to which the petitioner has never specifically denied.

[18] Even if the time to perform each and every task is included in the bill of costs, there is simply no method at all for the petitioner to 'trace' and evaluate the 'truthfulness' of the time cost stipulated. Not all companies can

or should afford to have such a comprehensive time-cost system that records all the time passed for each and every single task. Especially considering some of the tasks undertaken were performed outside of the office. The petitioner cannot expect the R&M to keep hold of a timer or any similar time-keeping system, every time every single task is undertaken. This is preposterous. Even if such measure is taken, then the petitioner would still sidestep the evidence and contend that the timer records were prepared in reference to the bill of costs and were doctored. It would be endless. If ever this court agrees to the petitioner's contention here, then the only feasible proof of proper time-costing would be the petitioner himself to be present to time-keep all of the tasks performed by the R&M. This is utterly ridiculous. Even if a proper record of time-keeping is prepared, there are no manners at all for the petitioner to 'evaluate' the record.

[19] The petitioner merely puts bare allegations that the documents and DIC were doctored without any proof to substantiate its allegations. The learned SAR has astutely pointed out that the DIC and the documents in court dates even in the year 2008 which was submitted by the previous R&M eight years ago. Thus, against the utterly bare unsubstantiated allegation by the petitioner, it is more probable than not that the evidence is true and that the evidence is not doctored or tailored to mirror the particulars of the bill of costs.

[20] At the core of this contention, what is pertinent, is the bill of costs, and the evidences to prove the items of the bill of costs. The learned SAR has considered the items in the bill of costs and has made reference to the supporting evidences to conclude her findings. In that cross-reference, the learned SAR has correctly evaluated the bill of costs, and this court is satisfied that the learned SAR has correctly decided that the evidence proves the tasks undertaken and time costs particularised in the bill of costs.

The Usage Of The Words 'We', 'Us', And 'Team' Is No Proof Of Duplicity In Claims

[21] Unsurprisingly, the extent of the petitioner's nit-picking even goes as far to contend that there are duplicity in claims in that multiple person(s) in charge are claiming for the same tasks merely because the particulars of the bill or the documentary reports, used the words 'we', 'us' and 'team'.

[22] It is patently clear that the petitioner is desperate to spur an issue out of nothingness that he has to resort to contend on pitiful issues of semantics and nomenclatures.

[23] In the reading of the inception report, it is the petitioner's contention that the usage of the words 'our', 'we' and 'team' is evidence enough that the R&M has unnecessarily delegated and claimed in duplicity, the same time cost for one single task for multiple individuals. Again, there was no evidence to this allegation but merely a sad review in literature which bears no significance in the present case.

[24] It is verily common that a group, or a group effort, an organisation, a community, a committee, and a team would regard itself in the plural form, even for single individuals. This is a very simple concept to understand. More so since the parties in the present case are represented by learned lawyers of Malaya. Hypothetically speaking, this court would say that it is very common in the legal fraternity especially so in a legal firm that an associate, or a partner of a law firm would regard himself or herself, as 'we' or 'our' or 'us' irrespective of who is personally assigned to conduct the case or carry out the task.

[25] It is utterly telling that the petitioner has no substantial challenges against the bill of costs and has no interest to pay anything for the R&M's services.

Discrepancy Between Reports And Bill Of Costs Not An Issue

[26] The petitioner has attempted to cast doubts on the bill of costs in highlighting certain discrepancies between a preceding status report at 9 January 2007 with Part A of the bill of costs. The same discrepancy is highlighted between the same status report with Part B of the bill of costs. It is his contention that because there are two different figures appearing between the two documents, the bill of costs is verily doubtful. But this court must emphasise that the discrepancy that occur here is not that the bill of costs is claiming a higher amount than the indicated amount in the status report. The bill of cost claims a lower amount instead. If anything, this is indicative that the R&M is earnest and honest in the preparation of the bill of costs rather than being any proof of doubt against the bill of costs.

[27] Nonetheless, the learned SAR has considered and has satisfied herself with the evidence and explanation afforded by the previous R&M after scrutinising all the documents in court.

[28] The appellant has not challenged the performance of the R&M but merely put the limelight on the minute issue of the discrepancy.

[29] In the essence of assessment of damages, what is pertinent is proof. Notwithstanding the fact that there might be discrepancy between an initial claim and a final claim, the most important issue is proof. Even if there is a discrepancy, but if all of the evidence is sufficient to hold the claim, then there is no reason at all for this court to not order payment on the proven claim.

The Petitioner's Afterthought On Part B Of The Bill Of Costs

[30] Very late into this case, after failing to challenge anything against the bill of costs the petitioner has raised contentions on the amount of claims made in respect of the legal costs particularised in item 2 (Legal matters and proceedings) of Part B (Details of work done and time cost for 1 July 2006 to 9 January 2007) of the bill of costs.

[31] However, this court is minded that these issues were not challenged at all right from the notis penetapan, bankruptcy action, and even at the hearing of the assessment of the bill of costs before the learned SAR with the attendance of the petitioner. These issues were only raised very late at this appeal stage. It is apparent to this court that this is merely an afterthought and an excuse to either delay or avoid his liability to pay the bill of costs.

Misreading Of The Updated Report On The Possession Of Assets 1 October 2007

[32] In a fallible attempt to discredit the bill of costs, the petitioner has highlighted an alleged discrepancy between the bill of costs and the updated report on the possession of assets 1 October 2007 ("updated report") in that the updated report only itemised works done from 21 September 2007 while the bill of costs claims for works done from 1 February 2007.

[33] This is yet again another desperate attempt by the petitioner to eschew from his liability to pay the bill of costs.

[34] Verily, the petitioner has misconstrued and misdirected this court as to the relevance and purpose of the report. What was contended to this court is a malicious selective and isolated reading of the updated report. Although the updated report particularised the goings-on from 21 September 2007 it was never stated that works were performed only from this date and that nothing at all was conducted from 1 February 2007 to 20 September 2007.

[35] The report was not the only document referred to in the bill of costs. And as correctly pointed out by the R&M, the report is only an update of what the R&M has achieved as at 1 October 2007, and not any conclusive report of all the works carried out by the R&M between 1 February 2007 to 31 December 2007.

[36] The learned SAR has not only looked at the report but numerous other documents which were referred to in the same bill of costs, and was satisfied with the substantiation of the bill of costs.

The Petitioner's Latent Contention Against Police Reports Filed Into Court

[37] At this late stage, being the appeal, after years having knowledge of the police reports the petitioner suddenly raised issues against the police reports which were lodged by the R&M which were in fact appointed by the petitioner's own application. The petitioner now sought to discredit the police reports in that there is a want of details and clarity.

[38] However, the police reports dated to the year 2007. These are reports carried out by the R&M which were appointed through the petitioner's application himself. And at all times before this appeal when these reports were given to the petitioner, he has never denied any of the reports or

complained of any want of details or clarity. It is already patently clear that the petitioner has accepted and admitted the police reports for the last eight years at least.

There Are No Repetitions Or Duplicity As Claimed By The Petitioner

[39] The petitioner in a last stitch effort contended that there was a repetition and duplicity of claims in Part C of the bill of costs in that the particulars of works regarding police reports in item 1.3 and 1.4 are duplicated in items 4.2 and 4.3.

[40] Again this is yet another desperate attempt by the petitioner in a selective and isolated reading of the documents put into court.

[41] It is vividly clear as pointed out by the R&M that there is no repetition between these items. Items 1.3 and 1.4 were written to cross-refer for further particular of works in 4.2 and 4.3. At the end of item 1.3, it even reads in brackets "(refer to C.4.2)" and at the end of item 1.4, it reads in brackets "(refer to C.4.3)"

[42] Clearly then, there is no repetition or duplicity as contended by the petitioner.

Particulars Of Works In Part D Of The Bill Is Included In The Status Report As Of 31 October 2009

[43] The petitioner repeats a similar contention that there is a discrepancy between the bill of costs with the status report as of 31 October 2009 in that the status report as of 31 October 2009 does not include any works from 1 January 2008 (as claimed in the bill of costs).

[44] However, as astutely pointed out by learned counsel of the respondents, the particulars of work from 1 January 2008 in Part D of the bill of costs has already been proven by the same status report as at 31 October and numerous documents in bundles 1 to 25 filed into court.

[45] Clearly the petitioner is disinterested to read, examine and scrutinise the documents put into court. The same status report of 31 October 2009 does contain particulars of work from 1 January 2008 which cross-refers to all documents from bundles 1 to 25. Verily, this is a waste of the court's time and resources.

The Learned SAR Has Made The Appropriate Deductions To The Out-Of-Pocket Claims In Part E Of The Bill Of Costs

[46] The petitioner contended that there is a want of documentary proof to the bill of costs particulars regarding the R&M's claim for out-of-pocket expenses in Part E of the bill of costs. This want of proof is somewhat the petitioner's ground to disprove the bill of costs.

[47] However, it is reiterated that the essence of assessment, is the proof of claims. Mere discrepancies or a lack of documentary proof would not automatically discredit the totality of the bill of costs. It only means that the court should be aware of such want of documentary proof and make the necessary reductions to the bill of costs.

[48] The learned SAR has already made the appropriate deductions for this lack of documentary proofs in cross-reference to the documents in court. The learned SAR has applied her judicial mind correctly.

[49] The petitioner heavily relied on the recent Court of Appeal decision in representatives of the *Representative of the Estate of Kuan Mei Ling, Deceased (Provisional Liquidator of the Respondent Company) v. Metroplex Bhd* [2013] 3 CLJ 196. The Court of Appeal held in para. 10 that:

> In exercising its power to determine the salary or remuneration of a provisional liquidator, the court applies the test of what is fair and reasonable remuneration, to be awarded in the circumstances of each particular case, taking into consideration, among others, the complexity of the matter involved and the length of time taken to complete the task given to the provisional liquidator.

The Court of Appeal further held in the case above in para 16:

> It is trite that the provisional liquidator may be reimbursed of the expenses properly incurred out of the company's assets that were administered by the provisional liquidator and were held by them. The burden was on the PL to show her entitlement to the fees and costs that she claimed and that the remuneration was justified. Therefore, the PL had an obligation to provide sufficient supporting information before court in order to facilitate the court to determine whether the costs were reasonable or not.

[50] This court does not intend to contra the Court of Appeal's decision above. The principle is indeed sound. However, be that as it may, the principle does not benefit the petitioner at all. The learned SAR has considered all the relevant documents and proofs in assessing the justifiability of the bill of costs while the petitioner has only come to court contending mere speculation and bare assertions and contentions. The R&M has come forth to the best of their capability with substance, while the petitioner has only come forth with mere conjectures and speculations.

[51] Thus, it is this court's decision to not interfere with the decision of the learned SAR. This court finds that the learned SAR has assessed the bill of costs on proper principles of law and due consideration and references to numerous documentary proofs which were filed into court.

[52] This court is guided by the recent High Court decision in the case of *Globaltech Enterprise Sdn Bhd v. Commerce Assurance Bhd* [2014] 1 CLJ 517:

> [11] In a taxation, the SAR must exercise his discretion judicially by considering the facts, the complexity of the case, the skill, specialised knowledge, the importance of the case to the parties and the work done

or necessarily done etc: *Kamalam Raman & Ors v. Eastern Plantation Agency (Johore) Sdn Bhd & Ors* [1997] 5 CLJ 250; [1996] 4 MLJ 674. Failure by the SAR to consider matters which ought to be taken into account before exercising his discretion would mean that the SAR has erred in law: *United Malayan Banking Corp Bhd v. Sykt Perumahan Luas Sdn Bh*d [1991] 1 CLJ 594; [1991] 4 CLJ (Rep) 163; [1991] 3 MLJ 181, *Co-Operative Central Bank Ltd v. Tan Nyap How* [1997] 1 LNS 414; [1997] 4 MLJ 568.

[12] Generally the court will not interfere with the decision of the SAR on a mere question of quantum if the SAR has exercised his discretion after consideration of all the circumstances and if no error of principle or some other material error arises. It is only when the SAR discretion has been exercised on wrong principle or the quantum allowed is obviously wrong that the judge will interfere: *Malayan Trading Co & Anor v. Lee Pak Yin* [1940] 1 LNS 53; [1941] MLJ 207, *Chin Cham Sen v. Foo Chee Sang & Anor* [1952] 1 LNS 15; [1952] MLJ 99, *Starlite Ceramic Industry Ltd v. Hiap Huat Pottery* [1973] 1 LNS 143; [1973] 1 MLJ 146, *Union Insurance Malaysia Sdn Bhd v. Chan You Young* [2003] 7 CLJ 50.

Court's Decision

[53] In light of all of the above findings, it is this court's decision that the petitioner has ultimately failed to prove its case.

[54] This court hereby dismisses the petitioner's appeal.

[55] This court hereby orders that the decision of the learned SAR Sharifah Muhaymin binti Abd Khalib dated 19 August 2015 to remain and the petitioner to pay to the respondents the amount ordered in the same decision above.

On The Issue Of Costs

[56] Having heard the submission from learned counsels for the petitioner and the respondents, this court hereby orders the petitioner to pay the respondents a global sum of RM5,000 in costs.